IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

O R D E R

(Govind Ram Vs. State & Ors.)
(S.B.CRIMINAL REVISION PETITION NO.203/2006)

DATE OF ORDER: MARCH 7, 2007

P R E S E N T

HON'BLE MR.JUSTICE GOPAL KRISHAN VYAS

Mr.K.R.Bhati, for the petitioner
Mr.J.P.S.Choudhary, Public Prosecutor
Mr.Deepak Menaria, for non-petitioners

BY THE COURT:

By way of this petition, the complainant petitioner is challenging the judgment dated 3.12.2005 whereby the learned Judicial Magistrate First Class, Pindwara, District, Sirohi acquitted the non-petitioners while giving benefit of doubt from the charges levelled against them for committing offence under Sections 452, 341 & 323/34 I.P.C.

According to the facts of the case, petitioner lodged a F.I.R. on 7th November, 2002 at Police Station, Saroopganj stating therein that on 7.11.2002 at about 1.00 P.M. when he was standing at the door of his house, accused non-petitioners No.2 & 3 came there armed with lathi and hockey in their hands

and inflicted blows on his head as a result of which he fell down and at that time one Raju and Vijayraj came there to his rescue and the non-petitioners ran away. Upon this the police registered F.I.R. No.204/2002 for offence under Sections 451, 323 & 341 I.P.C. and after usual investigation filed challan under Sections 451, 323 & 341 I.P.C. The learned Magistrate after trial and after recording prosecution evidence acquitted the non-petitioners No.2 & 3 from the charges levelled against them.

The learned counsel for the petitioner contended that the impugned judgment dated 3rd December, 2005 acquitting the non-petitioners No.2 & 3 is erroneous and contrary to the evidence on record. It is also contended by the learned counsel that in this case Vijayraj is the eye-witness but from perusal of the order-sheet of the trial court it is clear that despite the fact that he was an important witness the learned trial court did not take serious steps to summon him in Court. He was also not produced by the prosecution. It is further submitted that findings of the learned trial court are based upon evidence led by the defence while ignoring the evidence of prosecution on material aspects. Therefore, the judgment passed by the trial court deserved to be quashed. It is also contended that only on the ground that another eye-witness P.W.1 Raju, who has been declared hostile, the prosecution story cannot be thrown out. The whose evidence was required to be taken into account for

the purpose of convicting the non-petitioners. It is also contended that medical evidence is also corroborating the prosecution story as per the statement of Dr.Dau Lal Chauhan (P.W.5). It is further contended that the trial court has erred in law by relying upon the statements of Ashok Kumar (D.W.2) and Kheta Ram (D.W.3), their testimony cannot be accepted because Ram Kumar is the uncle of non-petitioner No.3 Prashant and Kheta Ram is cousin of non-petitioner No.2 Moda. Therefore, the judgment passed by the learned trial court is illegal based on perverse findings.

I have gone through the impugned judgment and the entire record of the case. It is true that in this case the prosecution has produced as many as six witnesses namely P.W.1 Raju, P.W.2 Hamat Singh, P.W.3 Mohabbatram, P.W.4 Govind Ram, P.W.5 Dr.Dau Lal Chouhan and P.W.6 Shaitan Singh and five documents were exhibited and after recording statements of accused under Section 313 Cr.P.C. the opportunity to lead evidence by the defence was granted. On 30 June, 2005 an application under Section 319 Cr.P.C. was filed by the non-petitioners for giving statements as defence witnesses and their statements were recorded as D.W.1 and D.W.4. Along with the non-petitioners statements of Ram Kumar and Kheta Ram as D.W.2 and D.W.3 were also recorded. In this case eye-witness P.W.1 Raju turned hostile before the court. P.W.2 Hadmat Singh

stated that in his presence the site plan was prepared. It is also stated that Govind Ram asked the police that occurrence took place inside the house. As per the statement of P.W.3 Mohabbatram who is one of the Motbir of the site plan, at the time of preparation of the site plan those persons who were standing there informed the police that occurrence took place inside the house. P.W.5 Dr.Dau Lal Chouhan stated that injury report Ex.P5 was prepared by him. He further stated that injuries mentioned in Ex.P5 can be caused due to hit upon hard surface. P.W.6 Shaitan Singh is the Investigating Officer, who investigated the case. While discussing the entire evidence including the defence evidence it has been held by the learned trial court that none of the witnesses is supporting the prosecution story as narrated by complainant petitioner P.W.4 Govind Ram. It is also observed in the judgment that opportunity to lead evidence by producing eye-witness was granted but the same witness was not produced before the Court by the prosecution. After taking into account the entire evidence, the learned trial court considered that for convicting an accused it is the duty of the prosecution to prove its case beyond reasonable doubt. It is also held that only on the basis of testimony of one witness, who is complainant and in absence of any other corroborating evidence it cannot be presumed that prosecution has proved its case beyond reasonable doubt. I have also

perused the injury report. As per the opinion of the doctor P.W.5 Dr.Dau Lal Chouhan if a person hit with the hard surface such injury can be caused. Therefore, in my opinion, the learned trial court has not committed any error while holding that prosecution has not proved its case beyond reasonable doubt. Therefore, the petition is dismissed.

(GOPAL KRISHAN VYAS) J.

BKS/-